

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  17403US05									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number  10/763,087		Filed  01/22/2004								
	First Named Inventor  Alexander G. MacInnis										
	Art Unit  2182	Examiner  Hassan									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top;">/Mirut P. Dalal/ _____ Signature</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top;">Mirut P. Dalal _____ Typed or printed name</td></tr><tr><td style="vertical-align: top;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number 44,052</td><td style="vertical-align: top;">312-775-8000 _____ Telephone number</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top;">January 18, 2011 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Mirut P. Dalal/ _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Mirut P. Dalal _____ Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 44,052	312-775-8000 _____ Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	January 18, 2011 _____ Date
<input type="checkbox"/> applicant/inventor.	/Mirut P. Dalal/ _____ Signature										
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Mirut P. Dalal _____ Typed or printed name										
<input checked="" type="checkbox"/> attorney or agent of record. Registration number 44,052	312-775-8000 _____ Telephone number										
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	January 18, 2011 _____ Date										
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

In the Application of: )  
)  
) **Electronically Filed**  
)  
) **January 18, 2011**  
)  
Serial No. 10/763,087 )  
)  
Filed: 1/22/2004 )  
)  
Examiner: Hassan )  
)  
Group Art Unit: 2182 )  
)  
Confirmation: 6408 )  
)  
)

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

This correspondence is filed in response to the Office Action of 09/15/2010. Attached please find: (1) Remarks.

## REMARKS

Claims 1-3 and 11 are cancelled without prejudice. Claims 4, 5, 7-10, and 12 are presently pending and stand rejected. Pre-appeal review is respectfully requested.

Claim 4 was rejected under 35 U.S.C. 103(a) as obvious from the combination of Ben-Yoseph, Robinett, and Ottinger. Claim 4 recites, among other limitations, "wherein a predetermined minimum interval between subsequent accesses by a device is enforced, and wherein said predetermined minimum interval is long enough for another device to access".

The Office Action indicates that the foregoing is taught at Robinett, column 7, lines 50-67. Robinett is directed to a "Network Distributed Remultiplexer for Video Program Bearing Transport Streams". Robinett teaches assigning a dispatch time to the allocated descriptor of the transmit queue, depending on, for example, a receipt time of the transport packet to which the descriptor points and an internal buffer delay between receipt and output of the transport packet. Each transport packet is outputted in a time slot at a particular dispatch time, corresponding to a predetermined delay in the remultiplexer node. If more than one transport packet is to be outputted in the same time slot, each transport packet is outputted in a separate consecutive time slot.

Assignee respectfully traverses the rejection. It is first noted that Robinett is blind to the device originating the transportation packets. Therefore, not "predetermined minimum interval between subsequent access by a device is enforced". Robinett merely describes a first come, first serve transmission. Note that if the access time of a device is defined as the time the transport

packet is placed in the queue, there is no time restriction against the same device placing another transport packet in the queue. If the time of access is defined as the time of transmission, there is no restriction against the same device transmitting two consecutive packets. In contrast, Assignee claims "wherein a predetermined minimum interval between *subsequent accesses by a device is enforced*, and wherein said predetermined minimum interval is *long enough for another device to access*".

Accordingly, for the above reasons, Assignee respectfully traverses the rejection to claim 4 and its dependent claims.

## **CONCLUSION**

For at least the foregoing reasons, Assignee submits that each of the pending claims are now in a condition for allowance. Accordingly, Examiner is requested to pass this case to issuance.

It is believed that all monies for the actions described herein are provided with this correspondence. To the extent that additional monies are required for any of the actions requested in the correspondence, Commissioner is authorized to charge such fees and credit any overpayments to deposit account 13-0017.

Respectfully Submitted



Mirut Dalal  
Attorney for Assignee  
Reg. No. 44,052

Date: January 18, 2011

McAndrews, Held & Malloy, Ltd.  
500 West Madison - Suite 3400  
Chicago, IL 60661

Phone (312) 775-8000  
FAX (312) 775-8100